

RCRA and Revitalization – Making Cleanup a Bridge to Reuse

November 14, 2002

Susan Bromm
Deputy Director
Office of Site Remediation Enforcement
US EPA



Overview

- The Small Business Liability Relief and Brownfields Revitalization Act of 2001—Its Impact on RCRA Sites
- The RCRA Completion Guidance
- The Use of RCRA PPAs in Brownfields Redevelopment
- Parceling at RCRA Sites
- Update on a RCRA Brownfields Prevention Pilot - The Milt Adams Site

The Brownfields Revitalization Act – It's Impact on RCRA Sites

- The Small Business Liability Relief and Brownfields Revitalization Act of 2001 was signed by President Bush on January 11, 2002
- The act defines brownfield sites as: “Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”
- For the first time, the Act provides the opportunity for assessment, clean-up, and revolving loan fund grant money to eligible entities of RCRA facilities—
- However, there are certain criteria which must be met—

The Brownfields Revitalization Act



RCRA generator sites and RCRA TSDFs are brownfields for purposes of eligibility for grants and the enforcement bar unless they fall within one the exclusions.....

RCRA Facilities That Are **Excluded** From the Definition

- RCRA permitted facilities;
- RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under RCRA § 3008(a), § 3008(h), § 3013, and § 7003;
- Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that requires the facility to conduct corrective action or otherwise address contamination at the facility;
- Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

However:

- The Act provides that these excluded sites are still eligible for grant money if the applicant can demonstrate that the funding will ensure protection of human health and the environment and promote economic development, or the preservation of green space.
- EPA will consider providing funding to an applicant for assessment or cleanup activities at such a site on a property specific basis.



Enforcement Bar

- Section 128(b) provides protection from enforcement actions under CERCLA Sections 106(a) and 107(a) for persons conducting a response action at a brownfields site if that person is in compliance with a State program which specifically governs such response actions for protection of public health and the environment.
- Exceptions do apply to this bar.

Note:

- This enforcement bar applies to RCRA sites that are not excluded from the definition of brownfields but shields the site from CERCLA 106//107 liability, not RCRA liability.

RCRA Completion Guidance

-  Defines when a clean-up is completed
-  Suggests a process for memorializing this decision

Two Types of Completion at RCRA Facilities

- **Corrective Action Complete Without Controls** - All cleanup activities at a facility are complete and the site is restored to unrestricted use.
- **Corrective Action Complete With Controls** - When a site has been restored to an industrial or other restricted use and controls (i.e., engineered or institutional) have been put in place to insure that protection of human health and the environment is achieved.

RCRA Completion Guidance

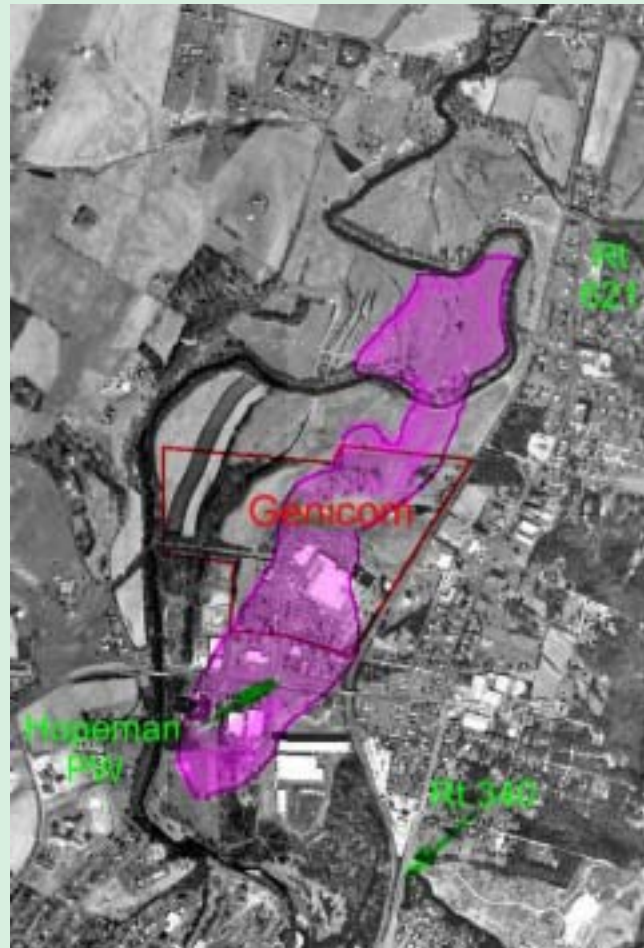
- Must achieve site specific cleanup standards;
- Controls, if any, must generally be enforceable through a permit, order, or other mechanism.
- Public Participation

The Use of RCRA PPAs in Brownfields Redevelopment

- Prospective Purchaser Agreements (PPAs) (Covenants Not to Sue), while having an extensive history at Superfund sites, have been used only in limited circumstances at RCRA sites.
- Because RCRA does not provide independent authority to EPA to resolve liability issues, DOJ involvement and concurrence is required.

Examples of RCRA PPAs - Genicom

- EPA issued a Unilateral Administrative § 3008(h) Order against Genicom in 1990.
- Genicom filed for bankruptcy in March 2000.
- Solutions Way Management wanted to purchase the site for redevelopment for commercial and light manufacturing.
- Currently, there is a printing services company and a warehouse distribution center.



Genicom PPA



Genicom PPA

- The contamination at the site was caused by GE who was the previous owner of the site.
- GE remains liable for the cleanup of the site and is in the process of completing its corrective measures study.
- EPA entered into a PPA with Solutions Way Management in consideration of its commitment to maintain the cap for a SWMU at the site, maintain records at the Site, be responsible for Site security, and submit detailed work, sampling, and analytical plans to EPA in any instance where it proposes to develop the Site.

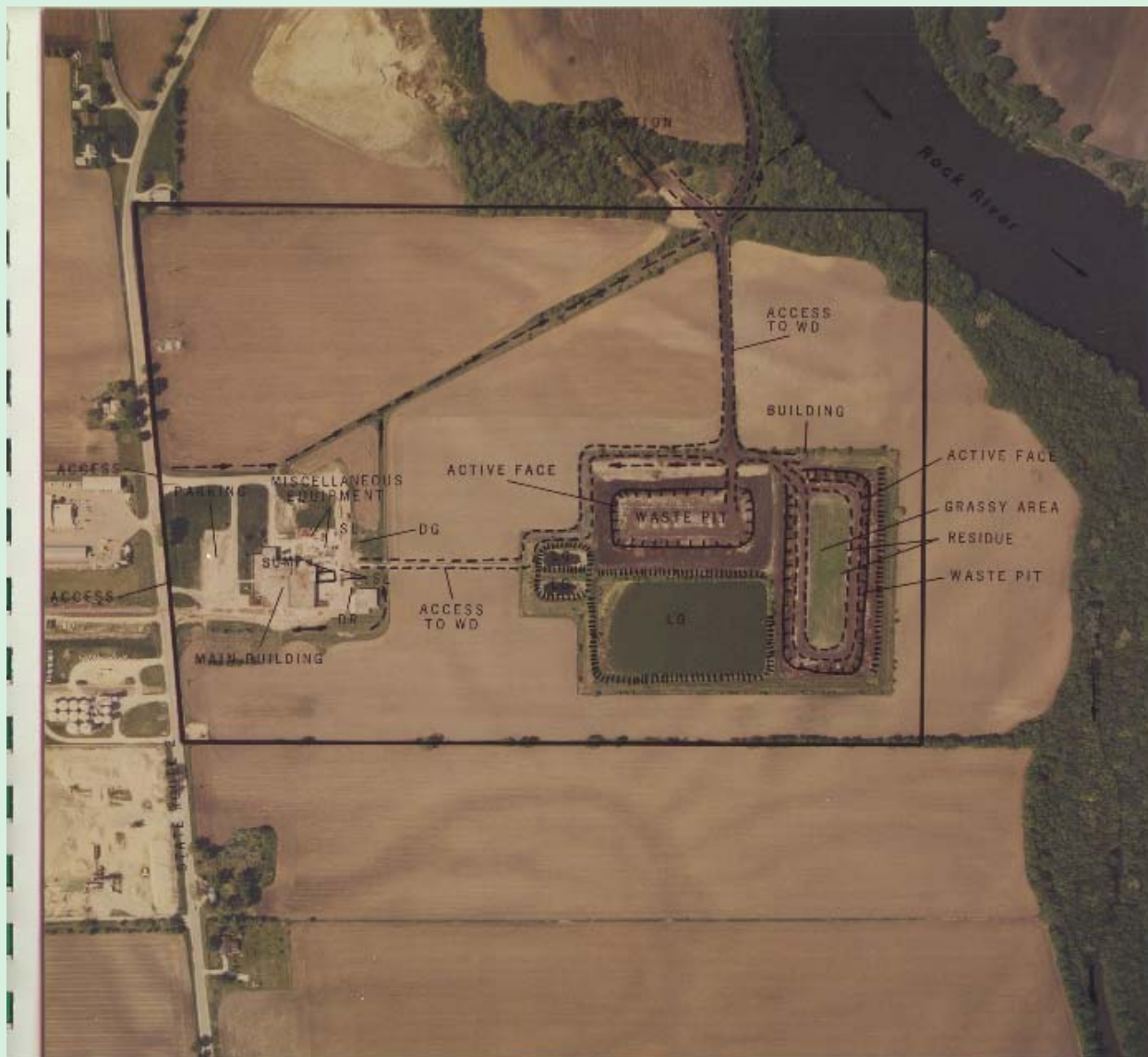


Another Example: Sterling Steel - Leggett & Platt, Inc., Sterling Illinois

- Sterling Steel, a subsidiary of Leggett & Platt, Inc., was formed for the purpose of acquiring and operating part of the bankrupt Northwestern Steel and Wire Company (“NWSW”) site located in or near Sterling, Illinois.
- From approximately 1879 to May of 2001, the Site was utilized by NWSW and its predecessors in the production of steel and related products.
- In December of 2000, NWSW filed for bankruptcy under Chapter 11 of the Bankruptcy Code.
- In May of 2001, NWSW shut down all operations at the Site.

Sterling Steel

- The Site is comprised of all real estate, equipment, assets and operations utilized by the bankrupt NWSW and its predecessors in connection with its former steel mill operations, including outlying properties, (collectively, the “Steel Mill”), comprising approximately 700 acres.
- Sterling Steel proposed to renovate and reopen certain portions of the Steel Mill.
- In consideration of and in exchange for the United States’ Covenant Not to Sue, Sterling Steel agreed to perform certain remedial response actions at the Property and any other response actions necessary to receive a No Further Remediation Letter from IEPA.



INTERPRETATION CODE

BOUNDARIES AND LIMITS

- FENCED SITE BOUNDARY
- UNFENCED SITE BOUNDARY
- xxxxxx FENCE
- STUDY AREA

DRAINAGE

- DRAINAGE
- FLOW DIRECTION
- INDETERMINATE DRAINAGE

TRANSPORTATION/UTILITY

- ===== VEHICLE ACCESS
- ++++ RAILWAY

SITE FEATURES

- ===== DIKE
- SL STANDING LIQUID
- SL STANDING LIQUID
- EXCAVATION, PIT (EXTENSIVE)
- MOUNDED MATERIAL (EXTENSIVE)
- MM MOUNDED MATERIAL (SMALL)
- CR CRATES/BOXES
- DR DRUMS
- HT HORIZONTAL TANK
- PT PRESSURE TANK
- VT VERTICAL TANK
- CA CLEARED AREA
- DG DISTURBED GROUND
- FL FILL
- IM IMPOUNDMENT
- LG LAGOON
- OF OUTFALL
- SD SLUDGE
- ST STAIN
- SW SWALE

Common Elements of RCRA PPAs

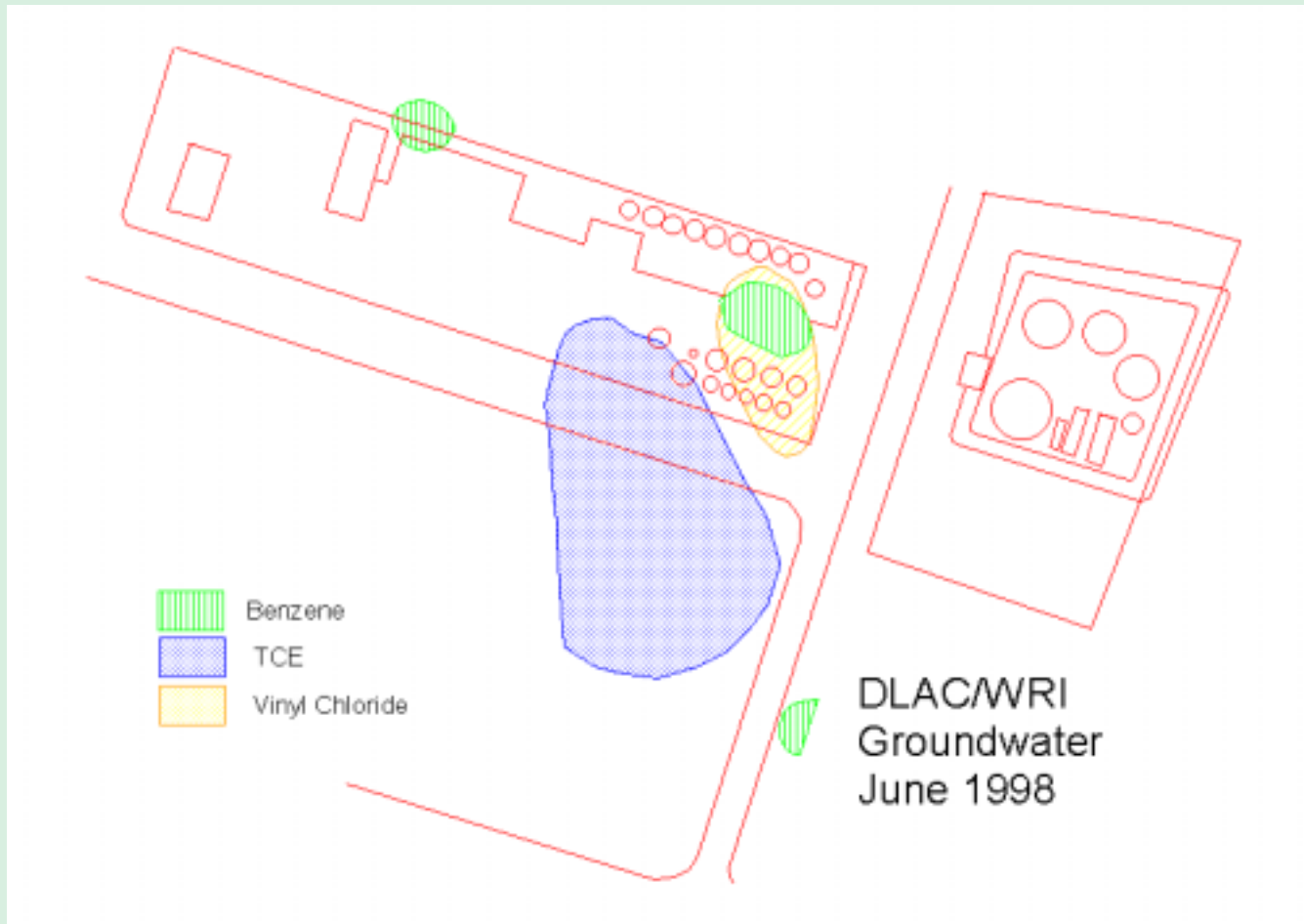
While no formal national policy has yet been developed by EPA regarding RCRA PPAs, these PPA's had the following common elements:

- Owner/operator is bankrupt;
- New purchaser will reuse or redevelop the site, providing a benefit to the community;
- The property gets cleaned up.

Florida's Use of RCRA PPAs in Brownfields Redevelopment

- May 20, 1994: Florida Dept. of Environmental Protection (FDEP) issued a permit to Envirotech, S.E. (ETSE) to close a hazardous waste storage and treatment facility.
- Jan. 10, 1995: FDEP accepts certification of closure, but groundwater contamination requires postclosure care.
- February 1999: ETSE files for bankruptcy.

ETSE Groundwater Plume 1998



Envirotech, S.E.

- July 30, 1999: ETSE was purchased by DLAC/WRI, LLC.
- September 2000: Consent Order with PPA issued by FDEP to DLAC/WRI, LLC, requiring submittal of closure plan for above-ground petroleum storage tanks, a groundwater monitoring plan, postclosure permit with corrective action.



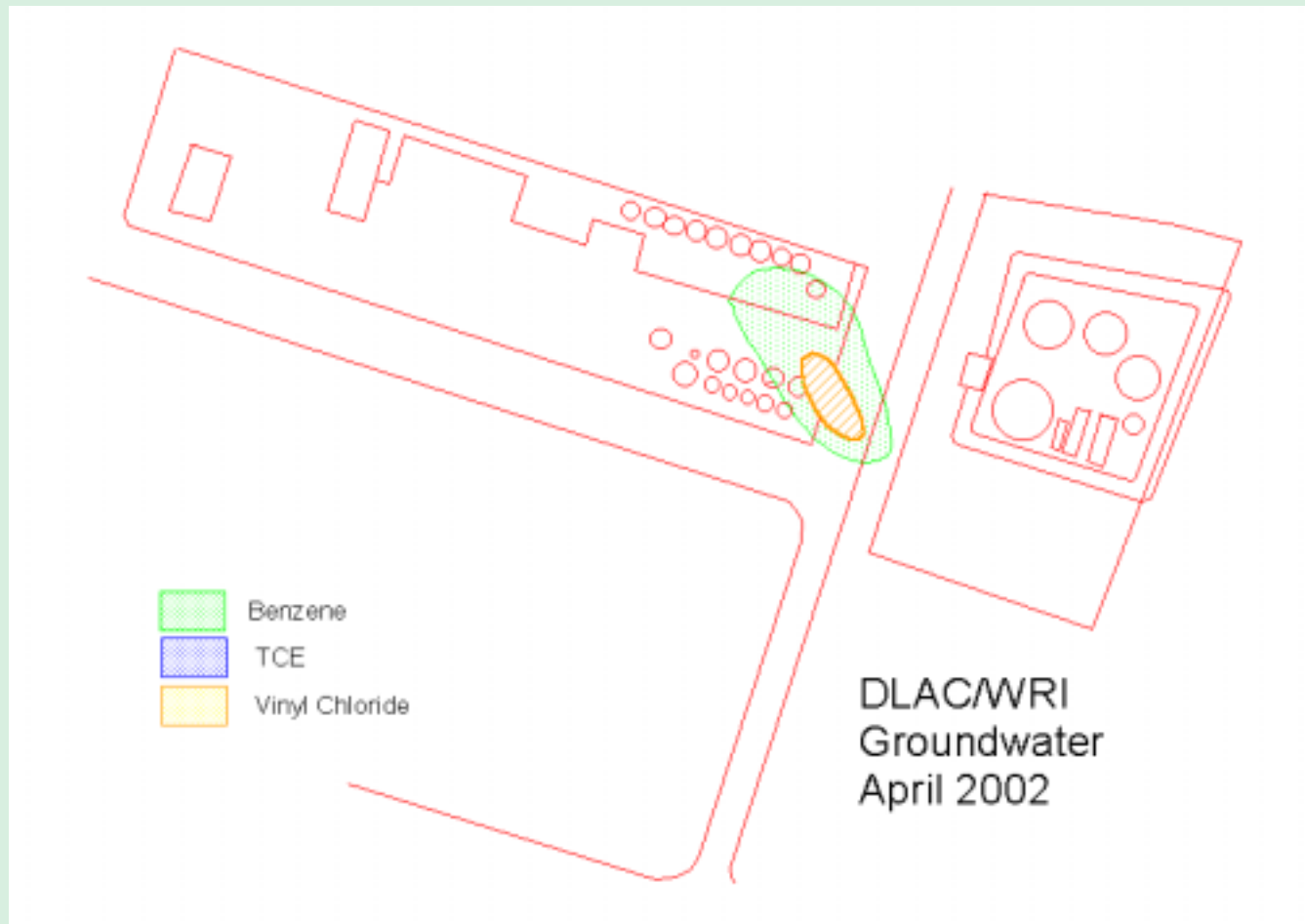
Remediation at Envirotech, S.E.



Envirotech, S.E.

- FDEP, for and in consideration of the complete and timely performance by DLAC/WRI, LLC, waived its right to seek judicial imposition of damages or civil penalties (certain other qualifiers were also identified in this clause of the Consent Order).
- Inspections have shown significant reduction of groundwater contamination

ETSE Groundwater Plume 2002.



Comfort Letters

- In many cases, a “comfort letter” will suffice instead of a PPA.
- Comfort letters/status letters are issued to prospective purchasers and are provided solely for informational purposes;
- They relate to EPA’s intent to exercise its RCRA corrective action authorities at a property based upon the information presently known to EPA.

Comfort Letters (cont.)

- Based on Superfund comfort/status letter model;
- With the exception of sharing information already contained in EPA's files, comfort letters are not intended to express EPA's opinion as to possible contamination or the extent of ownership or operation at the site;
- Letters are not intended to limit EPA's authority under RCRA, or any other law, or to provide a release from RCRA.
- For more information, see epa.gov/compliance/resources/policies/cleanup/rcra/index.html and epa.gov/compliance/resources/policies/cleanup/brownfield/index.html.

Parceling at RCRA Sites

Working Concepts on RCRA Parceling

Reasons for Parceling




- Allow redevelopment of at least some of potentially idle property
- Can generate money to cleanup contaminated portions

Concerns



- Money is diverted from contaminated areas to owner's pocket, leaving possible bankrupted RCRA site which has potential to be a SF site.
- Selling clean property may have adverse effect on financial assurance.

Working Concepts on RCRA Parceling

Parceling at RCRA Permitted facilities




-  Remove parcel from site by permit modification.
-  Different types of permits to consider:
Corrective Action; Post-Closure;
-  Original owner liable for cleanup of any newly discovered contamination.

Parceling at Interim Status Facilities

-  May involve reprioritization of cleanup goals to facilitate transfer.
-  Some legal issues still being resolved

Working Concepts on RCRA Parceling

Other Issues

-  Notification
-  Bottom line: Who will ultimately be responsible for cleanup
-  What is regulating authority involvement with private parties in transfer of parcels?

Anticipated Date of Release

-  Winter of 2003

RCRA Brownfields Prevention Pilots

- RCRA Brownfields Targeted Site Efforts (TSEs) are designed to showcase Brownfields and RCRA Cleanup Reforms and emphasize the importance of addressing brownfields issues in RCRA cleanups.
- Sites selected for TSEs have one or more barriers that prevent them from being cleaned up and/or redeveloped.
- In its first round of TSEs begun in August 2001, EPA provided concentrated energy, attention, and a limited amount of resources for TSEs at seven selected sites with redevelopment potential to help move them forward in the cleanup process and to develop approaches and options for cleanup and reuse.

Update on a Pilot – The Milt Adams Site

- The Milt Adams, Inc. site is a 1.1 acre site located within the Denver metropolitan area in Commerce City, Colorado. Between 1972 and 1998, the site was owned and operated the Milt Adams, Inc. as a used oil recycling facility. During this time, soils were contaminated with petroleum hydrocarbons and other organic contaminants from leaking oil tanks located on site.
- Because rail and road access to and from the site are good, redevelopment is expected to follow quickly after completion of corrective action activities.
- However, no cleanup activities are occurring because Milt Adams, Inc. is now bankrupt and the corporation lacks the financial ability to complete the cleanup so that it can be redeveloped.

The Milt Adams Site (cont.)

- Under the TSE, a Small Area Opportunities Plan for the site was developed to assess redevelopment potential and explore reuse options for the site.
- The Small Area Opportunities Plan provides background information on the site; explores economic, study area, and site opportunities and challenges; outlines several reuse scenarios; and provides information about the redevelopment potential for the site as an industrial or commercial property. The Plan also presents options for attracting financing for redevelopment through a public-private partnership

The Milt Adams Site (cont.)

- Under this pilot, EPA is working with a Stakeholders Committee to establish a voluntary cleanup process with the site owner and companies that sent significant amounts of used oil to the site for recycling while it was in operation.
- The objective of the Pilot effort is to develop and implement a voluntary agreement that would result in the collection of enough money to cover the site cleanup costs and the purchase of an insurance policy to protect all cleanup fund contributors from future liability.

The Milt Adams Site (cont.)

- The Stakeholders Committee already has collected a majority of the funds (over \$600,000) needed for cleanup and has selected a contractor to do the site cleanup work.
- Once cleanup is underway, actual remediation is expected to take only about three months.
- If the Pilot is successful in collecting the cleanup funds, the TSE also may be used to conduct public outreach to announce the cleanup schedule and to involve the public in determining a reuse

